

TRANSMITTAL OF APPEAL BRIEFDocket No.
AUT-10002/36

In re Application of: Jean P. Montoya

Application No.
09/826,786-Conf. #4084Filing Date
April 5, 2001Examiner
J. LoftisGroup Art Unit
3623Invention: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY DATA
OVER THE INTERNET**TO THE COMMISSIONER OF PATENTS:**Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal
filed: November 20, 2007 .The fee for filing this Appeal Brief is \$255.00 .☐ Large Entity ☒ Small Entity☐ A petition for extension of time is also enclosed.

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This sheet is submitted in duplicate./John G. Posa/Dated: January 21, 2008

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Montoya

Serial No.: 09/826,786

Group No.: 3623

Filed: April 5, 2001

Examiner: J. Loftis

For: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY
DATA OVER THE INTERNET

APPELLANT'S APPEAL BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is J. Patrick Montoya, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 30 claims. Claims 8, 11-14 and 17-30 have been canceled and claim 31 has been added. Claims 1-7, 9, 10, 15, 16 and 31 are pending, rejected and under appeal. Claim 1 is the sole independent claim.

**IV. Status of Amendments Filed Subsequent
Final Rejection**

No after-final amendments have been filed.

V. Summary of Claimed Subject Matter

Independent claim 1 is directed to a method of collecting and disseminating survey information . The method comprises the steps of establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response (Figure 1; reference nos. 10, 16, 14, 30); receiving, by the survey collector, a request from the client for the previously collected survey results (Figure 2, reference nos. 34-46); providing the client with a survey questionnaire from the survey collector (Figure 2, reference nos. 44-48); providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client (Specification [0049]); rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client, wherein the composite survey response is unrelated to the survey questionnaire. (Specification [0043-0053])

VI. Grounds of Rejection To Be Reviewed On Appeal

A. The rejection of claims 1-7, 9, 10, 15, 16 and 31 under U.S.C. §103(a) as being anticipated [sic] by U.S. Patent No. 6,102,287 to Matyas, Jr. in view of U.S. Patent No. 6,175,833 to West et al.

VII. Argument

A. The Rejection of Claims 1-7, 9, 10, 15, 16 and 31.

Claim 1-7, 9, 10, 15, 16 and 31 under U.S.C. §103(a) as being "anticipated"¹ by U.S. Patent No. 6,102,287 to Matyas, Jr. in view of U.S. Patent No. 6,175,833 to West *et al.*

Claim 1 includes the steps of providing access to previously collected survey results (which include a composite survey response) *only if a response to the survey questionnaire is received from a client*, and wherein the composite survey response is *unrelated to the survey questionnaire*. Matyas does not teach or suggest such limitations, and the disclosure of West is of no help.

MATYAS ALLOWS ACCESS TO SURVEY RESULTS
WHETHER OR NOT A QUESTIONNAIRE IS RECEIVED

¹ Since the Examiner is combining references Appellant assumes the Examiner means "obvious."

It is clear from the Matyas patent that the inventors desire to have survey results disseminated regardless of whether or not a product is purchased, and regardless of whether or not a survey questionnaire is filled out. Indeed, it is Matyas' *intended purpose* to allow prospective purchasers to see the evaluations of others on the grounds that, if the opinions are sufficiently positive, the purchaser will buy the product. "Prior to making a purchase, the buyer 10 can receive survey results..." (Matyas, 13:66-67) This is one of Matyas' *principles of operation*.

Reference is also made to the flowchart of Figure 9 ("Steps by Buyer") and column 19 of Matyas:

"At step 204, buyer 10 points and clicks on the hyper-link to obtain product evaluation information for the product of interest. At step 62, buyer's browser requests URL for HTML page(s) from evaluator 50, i.e., the buyer 10 requests survey results for the product of interest by clicking on the evaluator's hyper-link. At step 63, buyer's browser receives HTML page(s) from evaluator 50. At step 205, buyer's browser views HTML page(s) received from evaluator 50. **The buyer 10 uses the product evaluation information in deciding whether to purchase the product or not.** For the purposes of the present invention we assume that the buyer 10 decides to purchase the product." (Matyas, 19:4-15, emphasis added)

It is the Examiner's position that Matyas should be modified with West "to produce the expected result of only showing survey results once a survey questionnaire is completed and submitted. This would ensure the database is updated with new opinions as each reader/customer requests survey results." (Final OA, p. 4)

But a user of the Matyas system cannot complete a survey questionnaire until after they purchase a product because the questionnaire is about the product they bought. To maintain survey results in secret until after a product is purchased—after a survey questionnaire is completed—would defeat an intended purpose of Matyas and undermine its principle of operation. If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)

THE SURVEY QUESTIONNAIRE OF MATYAS MUST BE RELATED
TO THE SURVEY RESULTS REQUESTED BY A USER

As mentioned, Appellant's claim 1 includes the limitation of the composite survey response that is unrelated to the survey questionnaire. According to the Examiner, "in the specification of Matyas, they use this scenario for purposes of explaining the invention, but that does not preclude the situation where a user is requesting survey results for several "products of interest," and only chooses one product to purchase." (Final OA, p. 2, "Response to Arguments"). But if a user of Matyas *does* purchase "one of the products" as postulated by the Examiner, the questionnaire will be about that product and will therefore be related to the survey results associated with that product.

The Examiner's argument *seems to be* that a user of the Matyas system could somehow look at the survey results for several "products of interest" but then buy something completely different (and, of course, fill out a survey questionnaire about the thing they bought). But this argument does not make sense. Even the Examiner acknowledges that the product ultimately selected for purchase qualifies as one of the "products of interest" for which survey results were requested. This is also what the reference teaches.

Matyas is directed to purchasing information in the form of HTML pages using a MiniPay system.

"At step 204, buyer 10 points and clicks on the hyper-link to obtain product evaluation information for the product of interest. At step 62, buyer's browser requests URL for HTML page(s) from evaluator 50, **i.e., the buyer 10 requests survey results for the product of interest** by clicking on the evaluator's hyper-link. At step 63, buyer's browser receives HTML page(s) from evaluator 50. At step 205, buyer's browser views HTML page(s) received from evaluator 50. The buyer 10 uses the product evaluation information in deciding whether to purchase the product or not. For the purposes of the present invention we assume that the buyer 10 decides to purchase the product." (Matyas, 19:4-15, emphasis added)

After purchasing the HTML pages with the MiniPay system:

"The buyer 10 can continue to view the purchased HTML pages for as long as he wants, or until some prescribed time limit has been reached, according to the terms and conditions of the purchase agreement. The purchased HTML page(s) also contain a survey link that permits the buyer 10 to fill in **a survey questionnaire for the purchased product.**" (Matyas, 19:27-33, emphasis added)

Thus, the subject matter of the questionnaire in Matyas is related *only* and *exclusively* to the “purchased product,” which was *exactly* the “product of interest” before the purchase was made. Matyas discloses no other scenario. In fact, according to Matyas, “the buyer 10 requests survey results for the product of interest.” Matyas’ of the singular “the” precludes any possibility that “the buyer” would request survey results for a product other than the product of interest, as suggested by the Examiner.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board’s concurrence at this time.

Respectfully submitted,

By: _____

Date: Jan. 21, 2008

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APPENDIX A
CLAIMS ON APPEAL

1. A method of collecting and disseminating survey information comprising the steps of:
establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response;
receiving by the survey collector a request from the client for the previously collected survey results;
providing the client with a survey questionnaire from the survey collector;
providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client;
rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client; and
wherein the composite survey response is unrelated to the survey questionnaire.
2. The method of Claim 1 wherein the step of establishing communication is done via the internet.
3. The method of Claim 1 further comprising the step of relating the survey questionnaire by subject matter to the previously collected survey results.
4. The method of Claim 3 wherein the request for the previously collected survey results and the survey questionnaire are related to automotive vehicles.
5. The method of Claim 3 wherein the step of providing the client with the survey questionnaire includes requesting the identifying indicia from the client.
6. The method of Claim 3 wherein the identifying indicia is a product identification number.

7. The method of Claim 3 wherein the identifying indicia is a VIN number.
9. The method of Claim 1, including the steps of:
receiving by the survey collector identifying indicia from the client; and
correlating the identifying indicia with a database to determine if a relationship exists between the identifying indicia and the subject matter of the survey questionnaire.
10. The method of Claim 1, including the steps of:
receiving by the survey collector identifying indicia from the client; and
correlating the identifying indicia with a database to determine if a relationship exists between the identifying indicia and the client.
15. The method of Claim 3 wherein the client is denied access to the previously collected survey results if no relationship is found between the indicia and the client.
16. The method of Claim 1 further comprising the step of assimilating the survey response into the composite survey response.
31. The method of claim 1, further including the steps of:
receiving by the survey collector identifying indicia from the client;
correlating the identifying indicia with a database to determine if the client is a registered member; and
providing access to the previously collected survey results only if the client is also a registered member.

APPENDIX B

EVIDENCE

None.

APPENDIX C

RELATED PROCEEDINGS

None.